

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q67651

Giorgio BARZAGHI, et al.

Appln. No.: 10/006,583

Group Art Unit: 2112

Confirmation No.: 3491

Examiner: Clifford H. KNOLL

Filed: December 10, 2001

For: METHOD OF PROVIDING COMMUNICATION IN DISTRIBUTED SYSTEMS

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant submits the following:

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

I. REAL PARTY IN INTEREST

The real party in interest is Alcatel Lucent.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

III. STATUS OF CLAIMS

Claims 1-12 and 14 are pending.

Claims 1-9, 11 and 14 are rejected under 35 USC 102(e) as anticipated by Ludtke (USP 6,496,860).

Claims 10 and 12 are rejected under 35 USC 103(a) as unpatentable over Ludtke in view of Zintel (6,779,004).

The rejections of all of claims 1-12 and 14 are appealed.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

IV. STATUS OF AMENDMENTS

There were no amendments filed subsequent to the final Office action mailed April 2, 2007.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

See Appeal Brief.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are:

1. Whether claims 1-9, 11 and 14 are anticipated by Ludtke.
2. Whether claims 10 and 12 are unpatentable over Ludtke in view of Zintel.

VII. ARGUMENT

In the Appeal Brief filed July 21, 2008, appellant argued that claim 1 requires that the two control units be part of a single control apparatus, and that the elements 12 and 13 of Ludtke, which the examiner is relying on as the claimed control units, are not part of a single control apparatus. At pages 6-7 of the Answer, the examiner argues that appellant has failed to point out where this requirement exists in the claim “despite ample opportunity to do so.” A brief glance at claim 1 shows that it refers to “two control units of a control apparatus” and further recites “said control apparatus comprising a master controller and said at least two control units connected to each other and to said master controller through a common bus.” This language was added in the amendment filed January 9, 2006 for the specific purpose of clarifying that the claimed control units were both part of the same control apparatus, and this was explained to the examiner at that time.

The element 12 in Fig. 1 of Ludtke is a video cassette recorder. The element 13 in Ludtke is a set top box. Lines 21-24 of column 5 of Ludtke refer to a media manager implemented within computer 14 in Fig. 1. The examiner reads the language of appealed claim 1 on these elements such that the VCR 12, set top box 13 and media manager running on computer 14 together form a “control apparatus.” It is simply unreasonable for the examiner to read the claim language such that the VCR and set top box are both part of a common “control apparatus.” These are two separate devices/units and his reference to them as being part of a single control apparatus is simply an arbitrary reading with no purpose other than to shoehorn

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

them into the appealed claim language. And the examiner has provided no rationale whatsoever for considering them to be parts of a single control apparatus, despite ample opportunity to do so.

Appellant has further pointed out in the Appeal Brief that Ludtke is not a distributed control system, but is instead a centralized control system where the peripheral devices are all managed by the media manager. In the Answer, the Examiner dismisses this as not being recited in the claims on appeal. But the examiner continues to ignore the claim language as well as detailed explanations of the relevance of this argument to the claim language. The present invention has two control units each controlling a respective different peripheral unit. That is distributed control. Ludtke has a single control unit (media manager) controlling two peripheral units (VCR 12 and set top box 13). There is nothing difficult to understand about this distinction. It is clear in the claim language, clearly described in the specification, clearly explained to the examiner. Ludtke does not show two different peripheral units each controlled by a respective control unit.

Appellant also pointed out in the Appeal Brief that the examiner had inconsistently referred to the units 12 and 13 as control units in some places and in other places as peripheral units controlled by the control units. In the Answer, the examiner has now for the first time explained that he is reading the claimed “control unit” and “peripheral unit” on two different portions of the internal components of the VCR. As pointed out in the Appeal Brief, this is simply an unreasonable reading of the claim language. Note that at page 9 of the Answer the examiner “clarifies” that according to his reading of the claim the peripheral unit controlled by the control circuitry of the VCR is the display device for the VCR. This is not the video screen

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

of the television 11 in Fig. 1 of Ludtke, but the display device that is part of the VCR itself, i.e., the small LCD screen that shows, e.g., the elapsed running time of the movie. Similarly, the “peripheral unit” being controlled by the set top box is not the television tuner but instead the LED or LCD display on the set top box that shows, e.g., what channel it is currently tuned to. To consider the LCD display devices of the VCR and set top box to be “peripheral units” controlled by “control units” within the VCR and set top box and then consider the internal circuitry of the VCR and set top box to be parts of a single control apparatus along with the media manager is something that just has no logic to it.

And if this is the claim reading now to be pursued by the examiner, it runs afoul of other claim limitations. Claim 1 requires “controlling the at least two peripheral units to provide data essential to the operation of the peripheral units and to detect possible data variations in the peripheral units.” Given that the peripheral units are the LCD display screens in the VCR and set top box, there are no “possible data variations” to detect. These are simply display screens that show the status of the VCR and set top box.

Claim 1 further requires that each control unit “submits information concerning data consumed and provided by” its peripheral unit to the master controller. Given that the peripheral unit is the LCD screen within the VCR, there is no data “provided by” the LCD screen to the other circuitry within the VCR.

Claim 1 further requires that each control unit “spontaneously sends [a] message over the bus whenever the data provided by at least one of the peripheral units varies.” There is no data provided by the LCD screen in the VCR, it does not vary, and there is no suggestion anywhere in

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

Ludtke that the VCR will send a message out onto the IEEE 1394-1395 bus in response to some data variation *provided by* the LCD screen.

As to the DCM discussed by the examiner at page 11 of the Answer, it is still unclear what the examiner is relying on this for, but whatever it is is not found in the claim language. It seems that the examiner is relying on the DCM's receiving of event information as to somehow be relevant to the claim requirement of each control unit sending messages over the bus whenever the data provided by a peripheral unit varies (claim 1) or the claim requirement of each control unit submitting information to the master controller concerning data consumed and provided by the peripheral unit controlled by the respective control unit (claim 11). There is no data "provided by" the LCD display of the VCR, but at a minimum there is no hint in Ludtke that the VCR will send to the media manager messages concerning data provided by the LCD display of the VCR.

As can be seen from the above, the examiner is attempting to force the claim language onto an arrangement in Ludtke that no one of any skill in the art would consider within the scope of the claim language, even if suggested to the artisan as some sort of "broadest reasonable" interpretation. And in forcing the reading of the claim language, there are certain requirements of the claims that the examiner must simply overlook.

While the above distinctions are all discussed in the context of claim 1, they apply equally well to independent claim 11, and therefore to all claims.

As to claim 2 additionally, claim 1 recites that each control unit submits information concerning data consumed and provided by its peripheral unit to the master control. Claim 2

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

then further requires that each control unit transmit to the master controller a structure of its own such message. In the application as originally filed, claim 2 recited that each control unit transmitted “*the* structure” of its own message to the master controller. This was amended on October 5, 2004, to recite “*a*” structure in response to an examiner rejection in an Office action mailed May 5, 2004, alleging that “the” structure lacked antecedent basis. There is nothing anywhere in Ludtke that suggest that either the VCR or the set top box sends to the media manager information regarding data consumed by or provided by their LCD display screens, and there is certainly no suggestion that the VCR or set top box will send the structure of the message it uses to send that information.

Regarding claim 4, the examiner argues at page 4 of the Answer that there is support for this subject matter in Ludtke, but now considering this in light of the examiner’s present position that the peripheral units are the LCD display screens of the VCR and set top box, the alleged support for claim 4 makes no sense whatsoever. Claim 1, in conjunction with its parent claim 4, requires that the VCR spontaneously send a message to the media manager when the VCR detects a variation in data provided by the LCD display screen of the VCR. There is no such data, and if there were such data there is no suggestion that the VCR would spontaneously send a message to the media manager about it. Claim 4 then further requires that a first portion of the message sent to the media manager contains (1) information concerning the control unit that has detected the variation, and (2) information concerning other control units that will consume the data in this sent message. Lines 2-6 of column 10 of Ludtke describe each device as essentially “subscribing” to certain types of event notifications, and giving the media manager a token to be

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

used when transmitting to that device. But the token is used for transmission by the media manager. There is no suggestion that the data variation message as sent by, e.g., the VCR, will have a portion of the message listing all other devices that will be interested in the message. That is something for the media manager to do (since Ludtke is a centralized control system).

As to claim 6, the examiner continues to consider a time stamp to anticipate the claimed counter, but fails to deal with the problem that claim 6 requires that the counter count forward by a *predetermined* amount at each message sent, and the time stamp amount is not predetermined but instead depends on the time the message is sent. There is certainly no suggestion in Ludtke that all messages will be sent only at predetermined intervals.

For the reasons discussed above and in appellant's Brief filed July 21, 2008, reversal of the examiner is respectfully requested.

Respectfully submitted,

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Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

CLAIMS APPENDIX

See Appeal Brief

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

EVIDENCE APPENDIX:

There is no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

Reply Brief Under 37 CFR § 41.41
USSN 10/006,583

RELATED PROCEEDINGS APPENDIX

There are no decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).